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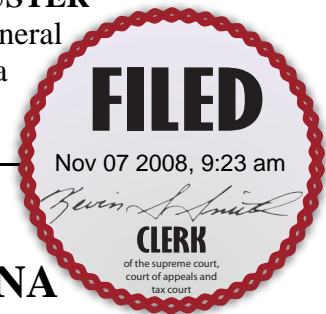
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**IN THE
COURT OF APPEALS OF INDIANA**

NORMAN RICHARDSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-0803-CR-179

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0601-FA-2

November 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Having pled guilty to class C felony possession of cocaine, Norman Richardson now appeals his ninety-four-month sentence. We affirm.

In 2005, Richardson worked as a confidential informant for police in exchange for a leniency recommendation on a drug conviction pending against him in Arkansas. As part of the operation, Richardson participated in two or three controlled cocaine buys from Anthony Alexander (“Alexander”), who was later convicted and sentenced to life imprisonment.

On January 5, 2006, police executed a search warrant at a Gary home. They arrested Richardson and found two handguns, two cell phones, 260 grams of cocaine, 73 grams of crack cocaine, and 33 bags of heroin. Richardson admitted owning some of the cocaine and acting as a middleman for another seller. He told police that he could assist them in obtaining kilos of cocaine if they desired to use his informant services again. Police declined his offer.

On January 7, 2006, the State charged Richardson with class A felony dealing in cocaine, class B felony dealing in a Schedule I controlled substance, and class D felony maintaining a common nuisance. On July 31, 2007, Richardson pled guilty to class C felony cocaine possession pursuant to a written plea agreement, and the remaining charges were dismissed. Sentencing was left open to the trial court, and after a hearing on February 22, 2008, the trial court sentenced Richardson to ninety-four months’ imprisonment.

On appeal, Richardson claims that the trial court abused its discretion in sentencing him to nearly eight years for a class C felony. Indiana Code Section 35-50-2-6(a) provides in part, “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.”

“[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. “So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” *Id.* An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court or the reasonable, actual, and probable inferences to be drawn therefrom. *Id.*

In cases involving sentencing challenges, an abuse of discretion may occur where the record does not support the trial court’s reasons, where a sentencing statement omits reasons clearly supported by the record and advanced for consideration, or where the stated reasons are improper as a matter of law. *Id.* at 490-91.

To the extent that Richardson predicates his claim upon the trial court’s prior knowledge of notorious drug dealer Anthony Alexander, we note that he made no objection when the trial court referenced Alexander at the sentencing hearing. Therefore, he has failed to preserve this issue for appeal. *McDonald v. State*, 861 N.E.2d 1255, 1260 (Ind. Ct. App. 2007), *aff’d in pertinent part*, 868 N.E.2d 1111, 1112-13 (Ind. 2007).

Waiver notwithstanding, we review for fundamental error. *Id.* Fundamental error occurs where a defendant’s due process rights are blatantly violated. *Id.* At Richardson’s sentencing hearing, the trial court questioned him as follows:

Can you tell me how you can—how you’re able to set up a guy like Anthony Alexander, a person who was famous on the streets for being a large drug dealer in Gary all the way back to my time from up to 1996? From, oh, probably ‘92 to 1996 when I was a drug prosecutor, he was somebody that everybody wanted to prosecute and try to find evidence for. Can you tell me

how a guy like yourself who really isn't involved in the drug trade, by your estimation or by your testimony here today, how is it that you can get into him and buy that amount of drugs from him?

Sent. Tr. at 46-47. Richardson responded that he and Alexander were “something like family.... not blood related, but... kind of close like.” *Id.* at 47.

The essence of Richardson's argument is that the trial court's previous experience as a prosecutor familiarized him with Alexander in such a way that he could not render an impartial sentence. “The law presumes that a judge will be unbiased regardless of the matter that comes before him.” *McDonald*, 861 N.E.2d at 1260. In *McDonald*, the trial judge knew two of the State's witnesses from his prior experience in the legal system. On appeal, the defendant claimed that the judge should have recused himself. *Id.* This Court concluded that while a judge's personal knowledge may warrant disqualification in some cases, the judge's personal knowledge of the witnesses did not amount to a deprivation of due process. *Id.*

Likewise here, we conclude that the trial court's prior knowledge of Alexander did not result in a violation of Richardson's due process rights. The evidence of Richardson's involvement with Alexander was introduced via Gary Police Lieutenant Jeff Trevino. *See* Sent. Tr. at 15-16, 21-22. The record indicates that Alexander had achieved notoriety as one of the city's major drug dealers. Thus, it would not be unusual for a local trial judge, regardless of background, to be familiar with Alexander's reputation. Moreover, the trial court referenced the fact that Richardson's plea was in consideration of his testimony that led to Alexander's conviction. *Id.* at 65-66. Therefore, we conclude that Richardson has failed to establish that the trial court acted partially and that his due process rights were violated as a result.

Richardson also asserts that the trial court abused its discretion in assessing aggravating and mitigating factors.¹ In essence, he invites us to weigh and balance aggravators and mitigators. However, *Anglemeyer* makes it clear that the trial court no longer has any obligation to weigh aggravating and mitigating factors. 868 N.E.2d at 491. Therefore, the trial court cannot be said to have abused its discretion for failing to properly weigh such factors. *Id.* Rather, the record must support the trial court's reasons. *Id.* at 490.

The trial court recited as mitigators Richardson's employment, schooling, family situation, and guilty plea. Sent. Tr. at 64. However, regarding the guilty plea, the court noted that the evidence against Richardson on the dismissed charges was sufficiently substantial that it "very likely would have resulted in a conviction for the Class A felony." *Id.* The trial court recited as aggravators Richardson's criminal history, which included prior drug offenses, the egregious nature and circumstances of the crime, and the fact that prior leniency had not deterred his criminal behavior. *Id.* at 64-66. The trial court remarked that "[i]n fact, prior leniency, in this Court's view, has fueled the defendant's criminal behavior in that it gave the defendant a false sense of security as to the consequences of leading the illegal lifestyle that he was living." *Id.* at 66. The trial court sentenced Richardson to ninety-four months' imprisonment and addressed him as follows:

Mr. Richardson, when I sit up here and make the decisions that I make, I make them from my own personal perspective and thought process and I also make them from what I believe that the public would expect under the

¹ To the extent that Richardson bases his challenge on the trial court disregarding a purportedly significant mitigating factor "that he had never had the benefit of a prolonged period of incarceration," Appellant's Br. at 6, we note that Richardson waived this issue by failing to raise it at the sentencing hearing. *Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). Waiver notwithstanding, Richardson fails to point to any evidence in the record to support this argument.

circumstances. What I believe that the public would expect and what is reasonable to conclude is that you belong in the Indiana Department of Corrections because you were, in fact, a drug dealer for an extended period of time. You were given breaks that other drug dealers were not given, and you choose to snub your nose to law enforcement and continue on with your illegal activity.

Id. at 67. As the evidence supported the trial court's recited factors and the ninety-four-month sentence was within the statutory range, we find no abuse of discretion. Therefore, we affirm.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.